

NOT TO BE PUBLISHED

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

THE PEOPLE,

Plaintiff and Respondent,

v.

GEORGE ANTHONY MAZZANTI, JR.,

Defendant and Appellant.

C087770

(Super. Ct. No. 17F1513)

Defendant George Anthony Mazzanti, Jr., pleaded no contest to two counts of corporal injury upon a spouse or cohabitant, one count of criminal threats, one count of false imprisonment by violence, one count of misdemeanor resisting a peace officer, and one count of misdemeanor sexual battery of a person who is unlawfully restrained.

On appeal, defendant contends that the trial court: (1) erred in ordering him to comply with the acquired immunodeficiency syndrome (AIDS) testing requirements of

Penal Code section 1202.1,¹ and (2) abused its discretion in refusing to disclose additional relevant personnel records of two police officers after a *Pitchess*² hearing. We agree that the AIDS testing order must be stricken, but otherwise affirm the judgment. Having reviewed the sealed transcript of the *Pitchess* hearing, we conclude that no additional information was discoverable.

FACTUAL AND PROCEDURAL BACKGROUND

Due to the limited scope of the claims on appeal, we need not recite the offenses in great detail. It suffices to say that defendant had an intimate relationship with the victim from 2014 to 2016. Over the course of their relationship, he subjected the victim to verbal and physical abuse, which continued even after their relationship ended.

Defendant pleaded no contest to two counts of corporal injury upon a spouse or cohabitant (§ 273.5, subd. (a)), one count of criminal threats (§ 422), one count of false imprisonment by violence (§ 236), one count of misdemeanor resisting a peace officer (§ 148, subd. (a)(1)), and one count of misdemeanor sexual battery of a person who is unlawfully restrained (§ 243.4, subd. (a)). The trial court then sentenced defendant to an aggregate term of six years four months in state prison. As to the sexual battery count, the court ordered defendant to submit to an AIDS test pursuant to section 1202.1.

DISCUSSION

I

AIDS Testing

Defendant contends, and the Attorney General concedes, that we must modify the judgment to strike the order requiring defendant to submit to AIDS testing pursuant to section 1202.1. We accept the Attorney General's concession.

¹ Undesignated statutory references are to the Penal Code.

² *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*).

Section 1202.1 requires the court to order “every person . . . convicted of . . . a sexual offense listed in subdivision (e) . . . to submit to a blood or oral mucosal transudate saliva test for evidence of antibodies to the probable causative agent of acquired immunodeficiency syndrome (AIDS) within 180 days of the date of conviction.” (§ 1202.1, subd. (a).) Misdemeanor sexual battery of a person who is unlawfully restrained (§ 243.4, subd. (a)) is not included among the list of offenses authorizing a court-ordered AIDS test under section 1202.1, subdivision (e). Moreover, the offense is not listed in section 1202.1, subdivision (e)(6)(A) as an offense that permits the court to order testing upon a finding of “probable cause to believe that blood, semen, or any other bodily fluid capable of transmitting HIV has been transferred from the defendant to the victim.” Accordingly, the court’s order that defendant submit to AIDS testing pursuant to section 1202.1 is unauthorized and must be stricken.

II

Pitchess Motion

Following his arraignment, defendant filed a *Pitchess* motion pursuant to Evidence Code section 1043, seeking the disclosure of the personnel files of two Redding police officers. The trial court conducted an in camera review of the officers’ personnel files and ordered the disclosure of certain documents, including the names of complaining witnesses and a witness list. Defendant requests that we review the hearing transcript to determine whether the trial court abused its discretion in not ordering the police department to produce more information from the officers’ personnel files.

Evidence Code sections 1043 through 1045 and Penal Code sections 832.5, 832.7, and 832.8 codify *Pitchess*, *supra*, 11 Cal.3d 531, which recognized that “a criminal defendant may, in some circumstances, compel the discovery of evidence in the arresting law enforcement officer’s personnel file that is relevant to the defendant’s ability to defend against a criminal charge.” (*People v. Mooc* (2001) 26 Cal.4th 1216, 1219.) If a defendant seeking to discover an officer’s personnel records shows good cause, then the

trial court examines all relevant information from the custodian of records “ ‘out of the presence and hearing of all persons except the person authorized [to possess the records] and such other persons [the custodian of records] is willing to have present.’ ” (*Id.* at p. 1226; see Evid. Code, §§ 915, subd. (b), 1045, subd. (b).) “A trial court’s decision on the discoverability of material in police personnel files is reviewable under an abuse of discretion standard. [Citation.]” (*People v. Jackson* (1996) 13 Cal.4th 1164, 1220.)

We have reviewed the sealed transcript of the in camera proceeding in which the trial court questioned the custodian of records under oath regarding the officers’ personnel records. Based on our review, we conclude the trial court did not abuse its discretion in finding that no additional evidence subject to disclosure and responsive to defendant’s request existed.

DISPOSITION

We modify the judgment to strike the AIDS testing order. A certified copy of the modified abstract of judgment shall be forwarded to the Department of Corrections and Rehabilitation. As modified, the judgment is affirmed.

KRAUSE, J.

We concur:

BUTZ, Acting P. J.

HOCH, J.